

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 25-2128

CHRISTIAN FERNANDO TOSCAN GOMEZ,
Appellant

v.

REYNA VIDALIA LOPEZ RAMIREZ

On Appeal from the U.S. District Court, E.D. Pa.
Judge Jeffrey L. Schmehl, No. 5:24-cv-02196

Before: SHWARTZ, RESTREPO, AND CHUNG, Circuit Judges
Submitted: Sept. 28, 2026; Filed: Sept. 30, 2026

NONPRECEDENTIAL OPINION*

SHWARTZ, Circuit Judge.

Christian Fernando Toscan Gomez appeals the District Court's order denying his petition for the return of his son, M.F.T.L., to Guatemala pursuant to the Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 22514 U.N.T.S. 98. Because the District Court correctly found that the petition was filed more than one year after M.F.T.L. was removed from Guatemala, and he is now well settled in the United States, we will affirm.

* This disposition is not an opinion of the full Court and, pursuant to I.O.P. 5.7, does not constitute binding precedent.

I

Gomez and Reyna Vidalia Lopez Ramirez are Guatemalan nationals and parents to M.F.T.L., who was born in Guatemala in April 2017. The three of them lived together until Ramirez and M.F.T.L. moved to a different town. Thereafter, Gomez and Ramirez entered a Guatemalan court-approved custody agreement.

Without telling Gomez, Ramirez left Guatemala with M.F.T.L. in July 2021. Gomez filed missing persons reports and had no contact with either of them until December 2023, when he encountered them at a church in Pennsylvania. Gomez filed a custody petition in Pennsylvania state court later that month.

In May 2024, Gomez filed a petition in the District Court asserting that M.F.T.L. had been wrongfully removed from Guatemala and seeking his return pursuant to the Hague Convention and the U.S. implementing statute.

The District Court held an evidentiary hearing. Gomez testified about their lives in Guatemala, Ramirez and M.F.T.L.'s disappearance, and his efforts to locate M.F.T.L. Ramirez testified that: (1) she and M.F.T.L. have lived in the Allentown, Pennsylvania—area since arriving in the United States; (2) she has requested asylum in the United States; and (3) M.F.T.L. (a) has a loving relationship with his U.S.-born younger brother, (b) began preschool in September 2021 and has attended elementary school since August

2022, and (c) has an individualized education plan (“IEP”), which provides for curb-to-curb transportation, occupational therapy, and speech therapy.

The District Court denied Gomez’s petition because, although Ramirez had wrongfully removed M.F.T.L. from his “habitual residence” in Guatemala,¹ Gomez had filed his petition for M.F.T.L.’s return more than one year after M.F.T.L. was removed from Guatemala, and M.F.T.L. was well settled in the United States. Gomez v. Ramirez, No. 24-CV-2196, 2025 WL 1415905, at *3-5 (E.D. Pa. May 15, 2025).

Gomez appeals.

II²

Under the Hague Convention and its implementing statute, the International Child Abduction Remedies Act, 22 U.S.C. § 9001 et seq., a petitioner seeking return of a child

¹ “[A] child’s habitual residence is the place where he or she has been physically present for an amount of time sufficient for acclimatization and which has a ‘degree of settled purpose’ from the child’s perspective.” Feder v. Evans-Feder, 63 F.3d 217, 224 (3d Cir. 1995). To determine where a child is a habitual resident, courts must consider the totality of the circumstances. Monasky v. Taglieri, 589 U.S. 68, 71 (2020).

² The District Court had jurisdiction under 22 U.S.C. § 9003(a) and 28 U.S.C. § 1331. We have jurisdiction under 28 U.S.C. § 1291.

We review the District Court’s factual findings for clear error and its legal conclusions de novo. Tsai-Yi Yang v. Fu-Chiang Tsui, 499 F.3d 259, 270 (3d Cir. 2007). If the District Court’s determination involves a mixed question of fact and law, we review the “underlying findings of historical and narrative facts for clear error, but exercise plenary review over the [C]ourt’s application of legal precepts to the facts.” Karkkainen v. Kovalchuk, 445 F.3d 280, 291 (3d Cir. 2006) (citation omitted).

We have not decided whether a district court’s ultimate determination that a child is well settled should be reviewed de novo or for clear error, and our sister circuit courts are split. Compare Lomanto v. Agbelusi, No. 23-993, 2024 WL 3342415, at *2 (2d Cir. July 9, 2024) (requiring de novo review), Alcala v. Hernandez, 826 F.3d 161, 168, 171 n.7 (4th Cir. 2016) (same), Guevara v. Castro, 155 F.4th 353, 361-62 (5th Cir. 2025) (same), cert. denied, 146 S. Ct. 1066 (2026), and In re B. Del C.S.B., 559 F.3d 999, 1008 (9th Cir. 2009) (same), with da Costa v. de Lima, 94 F.4th 174, 181 (1st Cir. 2024)

must prove that the child was wrongfully removed from the child's country of habitual residence. Monzon v. De La Roca, 910 F.3d 92, 96-97 (3d Cir. 2018); 22 U.S.C.

§ 9003(e)(1)(A). If the petitioner meets this burden, the respondent may oppose the child's return by proving an affirmative defense. Monzon, 910 F.3d at 97; Karpenko v. Leendertz, 619 F.3d 259, 263 (3d Cir. 2010).

One affirmative defense, set forth in Article 12 of the Hague Convention, permits a respondent to avoid an order directing the child's return by proving by a preponderance of the evidence that (1) the petition was filed more than one year after the child's removal, and (2) the child is well settled in the United States. Monzon, 910 F.3d at 96; see also 22 U.S.C. § 9003(e)(2)(B) (imposing preponderance of the evidence standard to Article 12 exception). To determine whether a child is well settled, courts examine "various factors that pertain to how well a child is settled in a community and home." Monzon, 910 F.3d at 105-06. Among other factors, courts consider (1) the child's age, (2) the stability of the child's residence and schooling, (3) whether the child has friends and relatives in the area, (4) the child's ties to his country of habitual residence, and (5) the respondent parent's and child's immigration status. See id. at 105-06 & n.88 (noting with approval the factors suggested by the District Court in Monzon v. De La Roca, No. 16-0058, 2016 WL 1337261, at *12 (D.N.J. Apr. 5, 2016)); see also Guevara v. Castro, 155 F.4th 353, 360-61 (5th Cir. 2025) (applying similar factors), cert. denied, 146 S. Ct.

(requiring clear error review), and Cuenca v. Rojas, 99 F.4th 1344, 1350 (11th Cir. 2024) (same); see also Castro v. Guevara, 146 S. Ct. 1066, 1067-68 (2026) (Sotomayor, J., respecting denial of cert.). We need not resolve this question, however, because we would affirm under either standard.

1066 (2026); Alcala v. Hernandez, 826 F.3d 161, 171 (4th Cir. 2016) (same). We focus on “the child’s connections to her or his new environment,” not a comparison of the “child’s current situation with her or his prior situation or expected situation if returned.” Alcala, 826 F.3d at 171.

The parties do not dispute that M.F.T.L.’s habitual residence is Guatemala. They also agree that Gomez filed his petition more than one year after M.F.T.L.’s removal. As a result, we focus on the District Court’s holding that M.F.T.L. is well settled in the United States, and conclude the Court was correct. First, at the time of the Court’s decision, M.F.T.L. was eight years old, old enough to form memories of and connections to his new home, where he has now spent over half his life. See da Costa v. de Lima, 94 F.4th 174, 179, 184-85 (1st Cir. 2024) (recognizing six-year-old’s capacity to form attachments to his new home supported well-settled determination); but see Guevara, 155 F.4th at 364 (concluding that seven-year-old was too young to form meaningful attachment to new home). Second, M.F.T.L.’s living situation appears stable. He lives with his mother and younger brother, with whom he is very close. Though he has lived in three different residences, all have been in the Allentown area and there is no indication that the moves were “compelled by instability.” Alcala, 826 F.3d at 172.

Third, M.F.T.L. has had stable schooling since his arrival, including preschool and elementary school, see Cuenca v. Rojas, 99 F.4th 1344, 1351 (11th Cir. 2024) (concluding nine-year-old was well settled because, along with other factors, he attended the same school for three years), where he receives substantial special education services, further demonstrating connection to his new environment, see, e.g., de Jesus Joya Rubio

v. Alvarez, 526 F. Supp. 3d 1186, 1203-04 (S.D. Fla. 2021) (considering IEP to support special education needs as evidence of child’s settlement); Matute-Castro v. Jimenez-Ortiz, No. 15-CV-04568, 2016 WL 8711076, at *9 (E.D.N.Y. Aug. 26, 2016) (recognizing special education services as evidence of child’s settlement).³

Finally, we are unable to draw any firm conclusions regarding Ramirez’s and M.F.T.L.’s immigration statuses,⁴ but this factor is not dispositive. See e.g., Alcala, 826 F.3d at 174; Lozano v. Alvarez, 697 F.3d 41, 57 (2d Cir. 2012), aff’d sub nom. Lozano, 572 U.S. at 1.

Based on these circumstances, we agree with the District Court that M.F.T.L. is well settled.⁵

III

³ Although Ramirez left Guatemala without informing Gomez of her or M.F.T.L.’s whereabouts, there is no indication that her efforts to conceal their location hindered M.F.T.L.’s settlement. See Lozano v. Montoya Alvarez, 572 U.S. 1, 17 (2014) (acknowledging “that steps taken to promote concealment” can “as a factual matter” prevent a child’s settlement); da Costa, 94 F.4th at 184-85 (concluding that steps taken to conceal child had no impact on child’s settlement).

⁴ Although Ramirez testified that she was seeking asylum, the District Court found this testimony “evasive.” Gomez, 2025 WL 1415905, at *2.

⁵ Gomez’s arguments that the District Court inappropriately (1) engaged in a comparative “best interests” analysis, and (2) considered factors that are properly reviewed under Article 13 of the Hague Convention both fail.

First, it was appropriate for the District Court to consider M.F.T.L.’s “best interests” after concluding that he was well settled in the United States because it reflected an evaluation of his well-being and informed whether the Court should exercise its discretion whether to order M.F.T.L.’s return even though he was well settled. See Tsai-Yi Yang, 499 F.3d at 271 (holding that a district court has discretion to order a child’s return even if affirmative defense applies); da Costa, 94 F.4th at 185 (“[T]he district court had the discretion to consider—in its analysis of whether equitable factors supported the child’s return to Brazil even though he had become settled—the effect that the return would have on the child’s wellbeing.”).

For the foregoing reasons, we will affirm.⁶

Second, the District Court made no findings concerning the matters covered in Article 13, which permits respondents to resist return to a child's habitual residence by proving by clear and convincing evidence that there is a "grave risk" that return would expose the child to a "physical or psychological harm or otherwise place the child in an intolerable situation." Hague Convention at art. 13b; 22 U.S.C. § 9003(e)(2)(A); Baxter v. Baxter, 423 F.3d 363, 368 (3d Cir. 2005). Rather, the Court considered the educational and therapeutic services that M.F.T.L. receives in Pennsylvania insofar as they demonstrate M.F.T.L.'s connection to his new community. See Monzon, 910 F.3d at 105-06 (considering "various factors that pertain to how well a child is settled in a community and home" to determine whether a child is well settled).

⁶ The Court directed Gomez's counsel to address certain errors in his brief. We have considered his explanations and will not impose sanctions, but he is reminded of his obligation to ensure his briefs are accurate in all respects and that failure to do so can result in sanctions or other disciplinary action.